

Section 300.17 of 12 NYCRR is hereby amended to read as follows:

In the representation of a claimant before the [b]Board or a Workers' Compensation Law Judge in any case:

- (a) An attorney or licensed representative shall file a notice of retainer and appearance, and, when appropriate, a notice of substitution, in the format prescribed by the chair, immediately upon being retained. The attorney or licensed representative shall also transmit a copy of such notice to the insurance carrier, self-insured or other representative of the employer at the time of filing.
- (b) (1) An attorney or licensed representative, substituted for a former attorney or licensed representative, shall immediately upon being retained serve the former attorney or licensed representative with a copy of the notice of substitution.
(2) An attorney or licensed representative may withdraw from representation of a claimant when:
 - (i) a notice of substitution has been filed; or
 - (ii) a withdrawal of representation completed in the format prescribed by the Chair has been filed and approved by a Workers' Compensation Law Judge or conciliator. Failure to obtain the approval of a Workers' Compensation Law Judge or conciliator prior to ceasing representation of a claimant, when a notice of substitution has not been filed, will constitute the basis of a referral for a violation of 22 NYCRR, Part 1200.0, Rules of Professional Conduct, Rule 1.16 for an attorney, and may be the basis for license revocation of a licensed representative.

[(c) No fee shall be approved or fixed, in accordance with subdivision (f) of this section, for the services of any such attorney or licensed representative who has failed or neglected to serve and file the required notice of retainer and appearance, the required notice of substitution, or obtained approval of a withdrawal of representation as required in paragraph (b)(2) of this section.]

[[d] c] [(1)] An attorney or licensed representative shall file an application in the format prescribed by the Chair in each instance where a fee is requested pursuant to sections 24 and 24-a of the Workers' Compensation Law, except that where the fee requested is not more than \$1000, the attorney or licensed representative may, in lieu of such written application, make an oral statement on the record setting forth the calculation used to determine the fee and certifying that the amount is in accordance with subparagraph (2) of Section 24 of the Workers' Compensation Law [as to the services rendered and the time spent for the performance of such services]. Notwithstanding the foregoing, the [b]Board may require an application in the format prescribed by the Chair for a fee of \$1000 or less. Any fee application shall be accurately completed.

[(2) All fees awarded at a hearing are to be made in the presence of the claimant, except that the Workers' Compensation Law Judge may, in his or her discretion, waive this requirement if the amount of the fee requested is not more than \$1000, provided that the

attorney or licensed representative makes a statement on the record as to the services rendered and the time spent for the performance of such services.

(3) In any case where the claimant is not present and the amount of the fee requested is more than \$1000, the claimant must be advised of the amount requested by the attorney or licensed representative 10 days in advance of the awarding of a fee. The fee application shall contain a statement signed by the claimant indicating that he or she has reviewed the fee request with the attorney or licensed representative, has no objection to the requested fee, and understands that any approved fee will be deducted from the award, or the attorney or licensed representative shall, together with the fee application, submit written explanation as to why the signature was not obtained. If the board finds insufficient excuse for failure to obtain the written signature, the fee application may be considered defective. Proof of service by mail or otherwise on the copy of form OC-400.1 filed with the board, may be accepted as evidence that the claimant has been so advised.]

([e]d) Whenever a fee is requested in excess of \$1000 for services rendered in conciliation, administrative determination, agreement pursuant to section 32 of the Workers' Compensation Law, or conference calendar processing, the request is to be made in the format prescribed by the Chair in each instance where a fee is requested. Such fee request shall [be itemized as to the services performed in the time since any prior fee request was submitted and the time spent for each service, with a total amount of time spent. Failure to sufficiently itemize services or time spent on services may be the basis for reducing or denying the fee request] set forth the calculation used to determine the fee and certify that the amount is in accordance with subparagraph (2) of Section 24 of the Workers' Compensation Law. [The claimant must be advised of the amount requested, the service rendered and the time spent for the performance of the services by the attorney or licensed representative 10 days prior to the awarding of a fee. Proof of service by mail or otherwise on the copy of the fee request filed with the board, may be acceptable as evidence that the claimant has been so advised.] Fees awarded in conciliation, administrative determination, agreement pursuant to section 32 of the Workers' Compensation Law, or conference calendar processing, may be approved by a conciliator or designee of the chair.

([f]e) Whenever an award is made to a claimant who is represented by an attorney or a licensed representative, and a written fee application is [requested] submitted, the [b]Board in such case shall approve a fee in an amount commensurate with the services rendered and the amount of compensation awarded, [and] having due regard for the financial status of the claimant [and whether the attorney or licensed representative engaged in dilatory tactics or failed to comply in a timely manner with board rules. Unbecoming or unethical conduct by an attorney or licensed representative may result in reduction or denial of a fee request. In no case shall the fee be based solely on the amount of the award]. In approving such fee, the Board shall apply the provisions of the schedule set forth in subparagraph (2) of Section 24 of the Workers' Compensation Law.

([g]f) Whenever an attorney or licensed representative is notified, by notice of substitution or otherwise, that the claimant has terminated his or her retainer, the attorney or licensed representative, in each instance where a fee is requested for services rendered for which no

previous fee has been approved, shall file an application for such final fee in the format prescribed by the Chair, within 30 days of the filing of the notice of substitution[, and serve a copy upon the claimant. The claimant must be advised of the amount requested, and the service rendered and the time spent for the performance of the services by the attorney or licensed representative, 10 days prior to the awarding of a fee. Proof of service by mail or otherwise on the copy of a fee request filed with the board, may be acceptable as evidence that the claimant has been so advised]. Where the fee requested is not more than \$1000, the attorney or licensed representative may make an oral statement on the record as to the services rendered [and the time spent for the performance of such services,] at the first hearing held following notice to such attorney or licensed representative that the retainer has been terminated. The Board shall determine the amount of fees allocated to a prior attorney or licensed representative out of the total attorney's fees awarded. A substituted for attorney or licensed representative, and attorney or licensed representative currently retained by the claimant, shall each be given the opportunity to present the Board with their respective positions in writing prior to the allocation of the awarded attorney's fee.

[(h) No fee shall be awarded to a claimant's attorney or licensed representative unless the attorney or licensed representative has complied with the requirements of this section.]

[(i)g] The [c]Chair may require that an attorney or licensed representative with access via the internet to his or her client's electronic case folder receive Board notices via an electronic mailbox.

Subdivision (j) of section 300.36 of Title 12 NYCRR is hereby amended to read as follows:

(j) An agreement may provide for [reasonable] fees commensurate with the services rendered by the claimant's attorney or licensed representative, consistent with subdivision (f) of subparagraph (2) of Section 24 of the Workers' Compensation Law. Whenever a fee is requested in excess of \$[450] 1,000, the requested fee is to be made upon form OC-400.1 attached to the submitted agreement.

Paragraph (5) of subdivision (f) of section 300.38 of Title 12 NYCRR is hereby removed.

[(5) The legal fee of claimant's legal representative shall be subject to a mandatory, substantial reduction for:

- (i) failure to timely serve on all parties and file with the Board the claimant's pre-hearing conference statement;
- (ii) filing a materially incomplete pre-hearing conference statement for claimant;
- (iii) failure to list a witness, who subsequently testifies, on claimant's pre-hearing conference statement; or
- (iv) failure to include with claimant's pre-hearing conference statement a copy of any document not in the electronic case file, which the claimant had in his or her possession or could reasonably have obtained, if such document is used by claimant's legal representative in seeking to establish the claim.

At the time of the fee award, the Workers' Compensation Law Judge shall state what fee would have been awarded but for the mandatory reduction, the amount of the reduction, and the resulting actual fee. If the Workers' Compensation Law Judge finds, based upon the legal representative's affidavit, that the conduct at issue was due to good cause and the legal representative exercised good faith and due diligence, the fee shall not be reduced.]